Evidence of the developers' intention is also capable of being derived from the approved building plans. In them, the driveways of the semi-detached residences are described as "dual" driveways. That conveys to me that the developers intended the driveways to be separate, but adjacent.

The evidence also establishes to my satisfaction that the defendant, for her part, at no time considered that anyone apart from her had any rights over any part of her land. Although it is a fact that she did not proceed with the fencing that she had in mind in 1957, there were reasons for that. She was not living at No. 69 at the time. She was expecting her first child, and she was in no hurry to have the fence erected. Following the birth of her child, a daughter, she took ill and she was pre-occupied with looking after her. In October 1958 the defendant went to live in England with her husband, and returned to Singapore in 1961. Following her return, she did not live in No. 69. It was let to tenants, and she did nothing about erecting a fence until 1973 (or 1975), after the trouble occurred between her tenant and the plaintiff's family. It was then that her fence and gate were first re-sited. The defendant caused work to be carried out from time to time, both before and after she went to live in No. 69 (which she did for the first time in 1978), over and on her driveway which established, to my mind, that she never at any time contemplated the land upon which her driveway was constructed as land over which anybody but she had rights.

In the result, the plaintiff has failed to persuade me of the existence of that "common intention" which is necessary to give rise to an implication of an easement of right of way over any part of the defendant's property in favour of the plaintiff.

It follows that the plaintiff's claim must fail, and it is dismissed with costs. There will be an inquiry by the Registrar as to whether the defendant has sustained any, and if so what, damages by reason of the injunction granted by the order dated June 25, 1985 which the plaintiff ought to pay.

The result of my determination of these proceedings will be unfortunate. If the defendant proceeds with the extension of her fence along the boundary and down as far as the junction with Trevose Crescent, and all indications are that she will, those leaving Nos. 67 and 69 will be obliged to reverse their vehicles some distance into Trevose Crescent (an operation which is not without danger since Trevose Crescent is a narrow and winding road), instead of being able to execute three point turns outside the gates of Nos. 67 and 69 and driving out, front first, safely and comfortably. Alternatively, they will be obliged to reverse into the driveways from Trevose Crescent, an equally inconvenient manoeuvre.

So be it. The parties have only themselves to blame for not attempting to resolve their differences in a civilized and neighbourly manner.

Order accordingly.

Solicitors: *Low & Partners; Ruth Kao.*

EZIO PAGANETTO v. THE MANAGEMENT CORPORATION STRATA TITLE NO. 1075

[O.C.J. (Chao Hick Tin J.C.) February 2, 1988]

[Singapore – Originating Summons No. 1177 of 1987]

Land Law – Strata titles – House rules made by management corporation – Whether house rules ultra vires and void – Whether procedural rules should be strictly followed – Land Titles (Strata) Act (Cap. 158, 1985 Ed.), s. 35(4).

The plaintiff was a subsidiary proprietor of the housing estate known as Eastern Lagoon Condominium II. By the present originating summons, the plaintiff sought a declaration that a set of house rules made by the Management Corporation Strata Title No. 1075, the defendant, was *ultra vires* the Land Titles (Strata) Act (Cap. 158, 1985 Ed.) ("the Act") and accordingly the house rules were void and of no legal effect. The plaintiff further sought an injunction to restrain the defendant from enforcing the house rules on the plaintiff, his family and servants. The only ground for the plaintiff's complaint about the house rules was that they were not made by the management corporation in accordance with the procedure laid down in section 35(4) of the Act.

Held, dismissing the application: (1) on the facts it was clear that the management corporation had not in any way discharged its duties or exercised its powers unreasonably;

(2) it is also clear from sections 35(2) and 35(4) that the by-laws shall be paramount. However, there is nothing in section 35(4) which suggests that every additional rule, no matter how trivial, made by the management corporation for the orderly enjoyment of common property in the condominium must be made by way of by-laws. The discretion rests with the management corporation;

(3) it was totally unreasonable to suggest that the management corporation, in exercise of its functions and

duties laid down in the Act, may not make rules for the day-to-day running of the common facilities of the condominium;

(4) to say that every rule laid down by the management corporation had to be made by way of by-laws would cause so much practical difficulties that it may undermine the very basis of condominium living. There must be flexibility in regard to these matters. It is plain good sense that only those rules which are important and which are not likely to be altered from time to time should be made as by-laws;

(5) this application was misconceived and was without merits.

ORIGINATING SUMMONS.

Jude P. Benny for the plaintiff.
Muthu Arusu for the defendant.

Cur. Adv. Vult.

Chao Hick Tin J.C.: The plaintiff is a subsidiary proprietor of the housing estate known as Eastern Lagoon Condominium II. By this originating summons, he seeks a declaration that a set of house rules made by the Management Corporation Strata Title No. 1075, the defendant herein, is *ultra vires* the Land Titles (Strata) Act (Cap. 158, 1985 Ed.) ("the Act") and accordingly the house rules are void and of no legal effect. The plaintiff further seeks an injunction to restrain the defendant from enforcing the house rules on the plaintiff, his family and servants.

The only ground put forward by the plaintiff to question the propriety of the house rules is that they were not made by the management corporation in accordance with the procedure laid down in section 35(4) of the Act.

In the correspondence between the plaintiff and the management corporation, the plaintiff has also alleged that the house rules are draconian and were not made in a democratic manner. I will first deal with this aspect of the complaint. From the affidavit filed by one Catherine Chua Gek Choo, the secretary of the management corporation, it would appear that prior to the making of this set of house rules, the developers of the condominium had earlier made similar house rules for the observance of all subsidiary proprietors/occupiers. It was in March 1987 that the council of the management corporation decided to review and revise the then existing house rules. To that end the managing agents, Jones Long Wootton (JLW), were requested by the management corporation to draw up a new set of house rules. The draft put up by JLW was considered at the 4th council meeting on May 8, 1987. The council decided to send the draft to the house rules sub-committee for further consideration. In June 1987, the house rules sub-committee submitted an amended draft to the council. This draft was circulated to the subsidiary proprietors for their comments and they were given two weeks to do so. Only four persons responded. The plaintiff was not one of the four. Except for some minor amendments, the draft, as circulated, was accepted by the council. All subsidiary proprietors were informed by a letter dated August 20, 1987 that the house rules would be implemented with effect from September 7, 1987.

In a further circular of September 7, 1987, all subsidiary proprietors were invited to give further feedback on the house rules within a period of three weeks to enable the management corporation to consider the need for any change or revision. I feel it important to quote the first three paragraphs of that circular, which are as follows:

> "The new house rules and screening procedures for visitors, renovation contractors *etc.* will be implemented effective today. In anticipation of the problems arising from changes in certain rules that residents may face, we invite residents to give any further feedback in writing to the council within three weeks from the above date.
>
> Your house rules sub-committee will consider and review your suggestions at the next meeting. Should amendment to the new house rules be necessary, this will be done at the soonest time possible. Residents will be informed accordingly.
>
> Your council has received and noted some verbal suggestions from residents on the new house rules. Some of these constructive suggestions will be carefully considered and if appropriate will be implemented in a month's time or so. We would like to express appreciation to these residents and look forward to their continuous support."

Three days later on September 10, the management corporation received a letter from the plaintiff dated September 7, wherein he alleged that the booking rules for the tennis courts were "draconian" and "undemocratic and unfair". Following that, the plaintiff's solicitors also wrote on September 15 to allege that the management corporation has acted in excess of its powers in making the house rules.

In view of the protest by the plaintiff, though belated, the management corporation convened a forum on September 30, 1987 to discuss the matter. Though invited, the plaintiff did not attend. Seven subsidiary proprietors and three

tenants attended, and of those only two of them objected to the system for the booking of tennis courts. Instead, the plaintiff proceeded to institute this action on October 30, 1987.

On the foregoing facts, it is clear to me that the management corporation has not in any way discharged its duties or exercised its powers unreasonably. It has sought the views of all the subsidiary proprietors and the plaintiff did not even bother to respond when comments were invited on the draft rules. He also did not attend the forum called specially to discuss the booking system for the tennis courts. Now he complains. In my view this complaint is clearly unwarranted.

I turn next to consider the question whether in making the house rules the management corporation has acted in excess of its duties and powers. It is common ground between the parties that this application should be decided on the basis of the provisions of the Land Titles (Strata) Act existing before December 1, 1987, the date on which the amendments brought about by Act No. 16 of 1987 came into force.

Under section 30 of the Act, the subsidiary proprietors shall, upon registration of the strata title plan, be constituted as a body corporate and be called the management corporation. The management corporation shall elect a council which shall, subject to any restriction imposed or direction given by the management corporation at a general meeting, perform the management corporation's duties and conduct the management corporation's business on its behalf and may for that purpose exercise the powers of the management corporation. Under section 31, one of the duties of the management corporation is "to manage and properly maintain the common property". It is also given, *inter alia*, the power "to do all things reasonably necessary for the performance of its duties in this part and for the enforcement of the by-laws set out in the Second Schedule" to the Act. Paragraph 3 of the Second Schedule provides that "the corporation shall control, manage, and administer the common property for the benefit of all the (subsidiary) proprietors."

The argument advanced by the plaintiff is that the management corporation may not make the house rules and enforce them against him without first going through the procedure of making them as by-laws under section 35(4) of the Act. It would be useful if I should set out in full the relevant provisions of section 35:

> "35.(1) Every subdivided building shown in a strata title plan shall be regulated by by-laws which shall provide for the control, management, administration, use and enjoyment of the lots and the common property.
>
> (2) The by-laws shall include the by-laws set out in the Second Schedule which shall not be added to, amended or repealed by the management corporation.
>
> (3) The by-laws set out in the Second Schedule shall, as and from the registration of a strata title plan, be in force for all purposes in relation to every subdivided building.
>
> (4) The management corporation may by special resolution make by-laws, not inconsistent with the by-laws set out in the Second Schedule, for regulating the control, management, administration, use and enjoyment of the subdivided building.
>
> (5) The by-laws for the time being in force in respect of the subdivided building shall bind the management corporation and the subsidiary proprietors to the same extent as if they constituted properly executed agreements -
>
> (a) on the part of the management corporation with the subsidiary proprietors; and
>
> (b) on the part of each subsidiary proprietor with every other subsidiary proprietor and with the management corporation,
>
> to observe and perform all the provisions of the by-laws.
>
> ...
>
> (12) Every occupier of a lot who commits a breach of any of the by-laws in the Second Schedule or makes default in complying with the provisions of the by-laws, and every subsidiary proprietor who is knowingly a party to the breach or default, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1,000."

It is clear from section 35(2) and (4) quoted above that the by-laws set out in the Second Schedule shall be paramount. All subsidiary proprietors are bound by those provisions. Indeed, a breach, if any, of the by-laws is an offence. The management corporation may only make additional by-laws which are not inconsistent with the by-laws set out in the Second Schedule. But there is nothing in section 35(4) which suggests that every additional rule, no matter how trivial, made by the management corporation for the orderly enjoyment of common property in the condominium must be made by way of by-laws. The discretion rests with the management corporation.

It is abundantly clear that under paragraph 3 of the Second Schedule, the management corporation has a duty to control, manage and administer all the common property for the benefit of all the subsidiary proprietors. Under section 31(2)(e), the

management corporation is given the power to do all things reasonably necessary for the enforcement of the by-laws set out in the second schedule. It must therefore follow that it is entitled to make house rules for those purposes. The fact that it could have made some of the house rules as by-laws does not mean that it may not make house rules just as house rules. Section 35(4) talks of "may". Many of those things dealt with in the house rules are really matters of details and procedures, which may need to be altered from time to time in the light of experience gained to ensure an orderly enjoyment by all subsidiary proprietors of common property. It is absurd to suggest that for every addition or amendment to the house rules, no matter how insignificant, the management corporation has to call a general meeting to effect a special resolution pursuant to section 35(4) of the Act. And until the by-laws are made or amended, nothing can be done about the problems faced by the condominium. This will be the result of the plaintiff's argument which I reject. It is totally unreasonable to suggest that the management corporation, in exercise of its functions and duties laid down in the Act, may not make rules for the day-to-day running of the common facilities of the condominium. The house rules are needed to avoid conflicts which could easily arise.

As an illustration of the untenability of the argument of the plaintiff, I would refer to the proviso to paragraph 3 of the Second Schedule. That proviso states: "Provided that the corporation may by agreement with a particular proprietor grant him the exclusive use and enjoyment of part of the common property or special privileges in respect of the common property or part of it." Following from this proviso, it means that the management corporation could allocate a specific common property for the exclusive use of a proprietor. That will also mean that other subsidiary proprietors will be denied the use of that specific common property. And if house rules are made to implement that agreement, does it therefore follow that those particular house rules forbidding other subsidiary proprietors from using that specific common property is therefore *ultra vires* and void unless they are first made as by-laws?

In my opinion, there cannot be any doubt that paragraph 3 of the Second Schedule, read with section 31, gives authority to the management corporation to lay down all the detailed rules needed to ensure that the condominium is managed efficiently and that the common facilities are properly used and enjoyed fairly by all. The house rules are for the good of all the subsidiary proprietors/occupiers. To say that every rule laid down by the management corporation has to be made by way of by-laws would cause so much practical difficulties that it may undermine the very basis of condominium living. There must be flexibility in regard to these matters. It is plain good sense that only those rules which are important and which are not likely to be altered from time to time should be made as by-laws. After all, the management corporation is constituted not by anybody else but by the subsidiary proprietors themselves. If the council has not acted fairly or properly, an extraordinary general meeting can always be called by subsidiary proprietors pursuant to paragraph 10(2)(a) of the First Schedule to the Act.

This action arises because the house rules reduce the number of hours in a week a subsidiary proprietor can use the tennis courts. The previous house rules laid down by the developers allowed three hours' use in a week — two hours during the peak-period and one hour during the off-peak period. Now it is two — one hour each for the peak and off-peak periods. As explained in the affidavit of Catherine Chua Gek Choo, the purpose of the reduction is to enable more subsidiary proprietors/tenants to have a chance to enjoy the use of the tennis courts. Living in a condominium means sharing in the enjoyment of the common property. The house rules are to secure that. I will just quote what was stated by the management corporation in its letter of August 20, 1987:

> "The house rules will serve as a guide for residents in the proper use and better enjoyment of the common property, including recreation facilities in the estate."

In my view, this application by the plaintiff is misconceived and without merits and I accordingly dismiss it with costs.

Order accordingly.

Solicitors: *Jude P. Benny & Co.; Drew & Napier.*